

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 9, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00007

Ex Parte: In the matter of Adopting
Regulations Governing Qualified
Education Loan Servicers under Chapter 26
of Title 6.2 of the Code of Virginia

ORDER TO TAKE NOTICE

Chapters 1198 and 1250 of the 2020 Virginia Acts of Assembly amend the Code of Virginia ("Code") by adding Chapter 26 of Title 6.2 (§ 6.2-2600 *et seq.*) of the Code ("Chapter 26"). Chapter 26 establishes a licensing and regulatory framework for qualified education loan servicers, and it will become effective on July 1, 2021. Section 6.2-2622 of the Code authorizes the State Corporation Commission ("Commission") to adopt such regulations as it deems appropriate to effect the purposes of Chapter 26.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed regulations to implement the provisions of Chapter 26 by, among other things, establishing the amount required for the surety bond, annual reporting requirements, the procedure for documenting eligibility for automatic issuance of a license, the application and renewal process, the annual fee schedule, and procedures for submitting information to the Bureau.

NOW THE COMMISSION, having considered the Bureau's proposal, is of the opinion and finds that the proposed regulations should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 on or before April 16, 2021. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2021-00007. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments.

(3) The Bureau shall file its statement of position in response to any comments filed pursuant to Ordering Paragraph 2 on or before May 17, 2021.

(4) This Order and the attached proposed regulations shall be made available on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Commission's Division of Information Resources shall provide a copy of this Order and the proposed regulations to the Virginia Registrar of Regulations for publication in the *Virginia Register of Regulations*.

A COPY of this Order and the attached proposed regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached proposed regulations to such interested persons as he may designate.

STATE CORPORATION COMMISSION**Chapter 220****Qualified Education Loan Servicers****10VAC5-220-10. Definitions.**

A. The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Chapter 26" means Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2 of the Code of Virginia.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2600 of the Code of Virginia.

10VAC5-220-20. Surety bond standards.

Pursuant to § 6.2-2604 of the Code of Virginia, a surety bond shall be filed with the commissioner and continuously maintained thereafter in full force by each licensee. The form of the bond will be prescribed and provided by the commissioner. The bond amount required for licensure shall be \$50,000 or such other amount as may be prescribed by the commissioner, but not exceeding \$500,000. After initial licensure, the bond amount required may be adjusted as the commissioner deems necessary.

10VAC5-220-30. Procedure for documenting eligibility through the Registry for automatic issuance of a license.

A. Pursuant to subsection A of § 6.2-2602 of the Code of Virginia, a person shall be exempt from the application procedures described in subsections A and B of § 6.2-2603 of the Code of Virginia upon determination by the commissioner that the person (i) has an agreement with the U.S. Secretary of Education under 20 U.S.C. § 1078(b), solely to the extent of the person's

actions as a guarantor that engages in averting defaults, or (ii) is a party to a contract awarded by the U.S. Secretary of Education under 20 U.S.C. § 1087f.

B. In order to document eligibility for this exemption, a person shall:

1. Complete and submit the Registry's company filing form for the person through the Registry. Such filing shall be accompanied by the fee required by subsection C of § 6.2-2603 of the Code of Virginia and the surety bond required by § 6.2-2604 of the Code of Virginia;

2. Upload a copy of the agreement or contract described in subsection A of this section through the Registry; and

3. Provide any additional information through the Registry that the commissioner deems necessary to determine a person's eligibility for the exemption.

10VAC5-220-40. Nationwide Multistate Licensing System and Registry.

A. Applications for a license under Chapter 26 shall be made through the Registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the Registry, on the commission's website, or by any other means the commissioner deems appropriate.

B. Every licensee shall maintain current information in its records with the Registry. Any changes to a licensee's information in its records with the Registry shall be updated no later than 10 days from when the change takes effect unless this chapter or Chapter 26 provides otherwise.

C. If (i) any provision of Chapter 26 requires a licensee to provide the bureau, commissioner, or commission with a written notice and (ii) the Registry enables licensees to submit such notice through the Registry, then a licensee shall be deemed to have complied with the written notice requirement if the licensee timely submits the required notice through the Registry.

D. A qualified education loan servicer license shall expire at the end of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. Except as otherwise provided in § 6.2-2602 B 2 of the Code of Virginia, a license shall be renewed upon the commissioner finding that the licensee has (i) requested license renewal through the Registry and (ii) complied with any requirements associated with the renewal request that are imposed by the Registry.

E. If a licensee fails to timely meet the requirements specified in subsection D of this section but meets such requirements before March 1 of the following calendar year, the license shall be reinstated and renewed upon payment of a reinstatement fee of \$100.

10VAC5-220-50. Books, accounts, and records.

A. A licensee shall maintain in its principal place of business all books, accounts, and records required by Chapter 26 and this chapter.

B. A licensee may maintain records electronically provided (i) the records are readily available for examination by the bureau and (ii) the licensee complies with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia), the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), and any other applicable laws.

10VAC5-220-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. If the bureau requests information from an applicant to complete a deficient application filed under § 6.2-2603 or 6.2-2609 of the Code of Virginia and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for

an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

B. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation or information and such other factors as the bureau determines to be relevant under the circumstances. If a licensee described in subsection A of § 6.2-2602 of the Code of Virginia is unable to deliver a written response, books, records, documentation or other information requested by the bureau, the licensee shall provide the bureau with documentation asserting the basis for the licensee's inability to comply with this subsection not later than 30 days from the date of the bureau's request.

C. A licensee or applicant shall not provide any information to the bureau, either directly or through the Registry, that is false, misleading, or deceptive.

10VAC5-220-70. Annual reporting requirements.

Pursuant to subsection B of § 6.2-2612 of the Code of Virginia, each licensee shall annually, on or before March 1, file a written report with the commissioner or Registry containing such information as the commissioner may require concerning the licensee's business and operations during the preceding calendar year.

In addition to other information required by the commissioner, the licensee shall provide the total number and dollar amount of qualified education loans serviced by the licensee pursuant to Chapter 26.

10VAC5-220-80. Schedule for annual fees for the examination, supervision, and regulation of qualified education loan servicers.

Pursuant to § 6.2-2614 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by licensees. Such fees are to defray the costs of examination, supervision, and regulation of licensees by the bureau. The fees are related to the actual costs of the bureau, the volume of business of the licensees, and to other factors relating to supervision and regulation.

The annual fee shall be \$1,000 per licensee plus \$0.48 per qualified education loan serviced by the licensee pursuant to Chapter 26 during the calendar year preceding the year of the assessment. In cases where a licensee was not licensed under Chapter 26 as of December 31 of the calendar year preceding the year of the assessment, the annual fee shall be \$0.

Fees shall be assessed on or before April 1 every calendar year. By law the fee must be paid on or before May 1.

The written report filed annually by each licensee pursuant to 10VAC5-220-70 shall provide the basis for its assessment.

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include the following: (i) the reimbursement for expenses permitted by subsection B of § 6.2-2614 of the Code of Virginia and (ii) the annual license renewal fee authorized by subsection B of § 6.2-2601 of the Code of Virginia.

10VAC5-220-90. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

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